

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

In re Marriage of JARMILA
JAKUBCIKOVA and ANATOLE OLCZAK.

JARMILA JAKUBCIKOVA,

Respondent,

v.

ANATOLE OLCZAK,

Appellant.

A120303

(Alameda County Super. Ct.
No. C822308)

In December 2003, a judgment was entered that incorporated a settlement agreement between Anatole Olczak and Jarmila Jakubcikova regarding the dissolution of their marriage. This judgment, however, did not end the litigation. Rather, it triggered numerous requests by the parties to, among other things, modify spousal and child support and receive reimbursement for various costs. On October 29, 2007, the trial court issued a comprehensive order ruling on all of the pending matters. Olczak appeals from this order and we conclude his objections lack merit. We therefore affirm the lower court's judgment. Additionally, this appeal raised so many frivolous issues unsupported by any citation to the record or legal authority that we conclude sanctions are warranted. (Code Civ. Proc., § 907.) We impose sanctions against Olczak and his counsel in the amount of \$7,500, payable to the clerk of this court.

BACKGROUND

Olczak and Jakubcikova decided to end their marriage and came to a settlement agreement regarding the dissolution of their marriage in December 2003. A judgment incorporating this settlement agreement was entered on December 8, 2003 (December 2003 settlement or December 2003 judgment).¹ The judgment provided for joint legal custody to both parents and physical custody to Jakubcikova of their one minor child.² Jakubcikova was to receive \$1,930 in child support from Olczak. Olczak had a gross income of \$14,569 a month and Jakubcikova had no income. The judgment ordered Olczak to pay Jakubcikova spousal support in the amount of \$2,962 a month until Jakubcikova “remarries, dies or January 1, 2009, whichever first occurs.”

The December 2003 settlement contained a section related to reimbursement and waiver. Section 11.7 in the settlement stated in relevant part: “Except as otherwise provided in this judgment, the court finds that each party waives each of the following: [¶] . . . [¶] 3. Any claim by either party arising from the date of filing the action through September 30, 2003, that there has been an overpayment or underpayment of support pursuant to a temporary support order issued herein, including any order where the court expressly reserved jurisdiction to recalculate support. [¶] 4. Any claim by either party for reimbursement of add-on expenses from the date of filing the action through September 30, 2003.”

With regard to the division of property, the December 2003 judgment provided that both Olczak and Jakubcikova would receive their separate property. The family residence in Berkeley (Berkeley home) was divided to provide Jakubcikova with a 70

¹ This case has a protracted history, which cannot be entirely gleaned from the incomplete record before us. Each party submitted an appendix and neither appendix includes all relevant documents. Our recitation of the background facts is therefore constrained by this incomplete record. Additionally, we set forth only those facts relevant to the issues raised by this appeal.

² Jakubcikova and Olczak had two daughters: one was a minor and the other was 19 years old at the time of the December 2003 judgment.

percent interest in the home and Olczak with a 30 percent interest. The Berkeley home eventually sold for \$2,880,000.

Olczak filed an order to show cause (OSC) for modification of child and spousal support on October 24, 2005.

On June 27, 2006, Olczak filed an OSC, which requested, among other things, reimbursement for overpayment of child and spousal support. In September 2006, neither Olczak nor Jakubcikova appeared at the hearings on these matters and the court dropped them due to the parties' failure to appear.

On October 25, 2006, Olczak filed an OSC, which included a request for attorney fees in the amount of \$61,618. Almost one month later, on November 22, 2006, Jakubcikova filed an OSC that contained a request for attorney fees and costs for having to retain counsel to pursue Olczak for unpaid support. She also sought a 10 percent "late fee" for untimely support payments during 2006.

On November 28, 2006, the court held a hearing on various requests by both parents to modify child and spousal support. After the hearing, the court in its order of December 5, 2006, modified the child support amount to \$1,599. It ordered spousal support in the amount of \$1,385 to be paid until January 1, 2009. The court also found that Olczak was entitled to credit for the amount of support that he overpaid for December.

Olczak filed an OSC on January 11, 2007, that involved requests to modify child and spousal support. He alleged that the court in its previous order of December 5, 2006, failed to consider that Jakubcikova had a capital gain of \$440,166 from selling the Berkeley home. He also declared that the court's calculation of his income was too high. Olczak sought to have the modified support payments made retroactive to November 2005.

On February 15, 2007, the trial court held a long cause hearing for the various issues pending. The court filed its tentative order on February 22, 2007. In its tentative order, the court stressed that neither party had submitted new evidence and that claims for reimbursement were only ripe for submission to the court after the claimant had

presented the other party with a written claim for reimbursement supported by proof of payment and a citation to the authority supporting the claim.

On May 17, 2007, Olczak filed an OSC. He raised various issues including another request for \$61,618 in attorney fees and a request for reimbursement for various costs. On May 30, 2007, Jakubcikova filed an OSC, seeking modification of child and spousal support, reimbursement for six items, and attorney fees. She filed another OSC on August 30, 2007, seeking unpaid child and spousal support from October 2004 and reimbursement for eight items.

The trial court heard the pending matters on September 6 and October 25, 2007; both parties appeared in propria persona. Between the first and second hearing, on September 25, 2007, Olczak filed an OSC seeking to modify spousal and child support and asking for attorney fees based on allegations that Jakubcikova committed fraud and perjury in prior proceedings before the court. Additionally, on October 1, 2007, Olczak filed what the trial court characterized as, “three voluminous ‘amended declarations’” On October 29, 2007, the court issued a comprehensive order ruling on all of the pending matters.

Olczak filed a timely notice of appeal.

DISCUSSION

I. The Record and Standard of Review

Although both parties were in propria persona in the lower court, Olczak has counsel on appeal. Olczak complains that Jakubcikova, who is in propria persona on appeal, does not provide proper citations to the record. We note that both parties do not properly cite to the record. Olczak’s statement of facts is incomplete. In his argument section, his few citations to the record are to his own arguments in the lower court, not to evidence.

Our task on appeal has been particularly onerous due to the state of the record on appeal. The lower court commented in its order of October 29, 2007, that the “record is a confusing morass of argument, re-argument, old and new material, unorganized and often unexplained exhibits, etc.” Not only is the record on appeal confusing, but it is

incomplete. In particular, the appendix submitted by Olczak does not include many of Jakubcikova's papers filed in support of her OSCs and in opposition to Olczak's OSCs.

Providing an adequate record is Olczak's responsibility, since he is the appellant. The appellant assumes " 'the burden of showing reversible error by an adequate record.' [Citation.]" (*Tudor Raches, Inc. v. State Comp. Ins. Fund* (1998) 65 Cal.App.4th 1422, 1433.) "It is the burden of appellant to provide an accurate record on appeal to demonstrate error. Failure to do so precludes an adequate review and results in affirmance of the trial court's determination." (*Estrada v. Ramirez* (1999) 71 Cal.App.4th 618, 620, fn. 1.) It is axiomatic that " 'an "order of the lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness." ' [Citation.]" (*Generale Bank Nederland v. Eyes of the Beholder Ltd.* (1998) 61 Cal.App.4th 1384, 1398.)

In reviewing the lower court's findings, we look to see "whether they are supported by substantial evidence. [Citation.] 'On review for substantial evidence, we examine the evidence in the light most favorable to the prevailing party and give that party the benefit of every reasonable inference. [Citation.] We accept all evidence favorable to the prevailing party as true and discard contrary evidence. [Citation.]" [Citation.] An appellant contending some particular finding is not supported must set forth in his or her brief a summary of the material evidence upon that issue, and, if that is not done, the error is waived. [Citation.] " 'It is incumbent upon appellants to state fully, with transcript references, the evidence which is claimed to be insufficient to support the findings." [Citations.]' [Citation.]" (*In re Marriage of Rothrock* (2008) 159 Cal.App.4th 223, 230.)

We apply the abuse of discretion standard to our review of the lower court's rulings on requests for reimbursement and to modify child or spousal support. (See, e.g., *In re Marriage of Reilley* (1987) 196 Cal.App.3d 1119, 1124; *In re Marriage of Pearlstein* (2006) 137 Cal.App.4th 1361, 1371.) Where the trial court's exercise of discretion is based on the facts of the case, it will be upheld "as long as its determination

is within the range of the evidence presented. [Citation.]” (*In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 670.)

II. Olczak’s January 11, 2007 OSC

On January 11, 2007, Olczak filed an OSC to modify child and spousal support and for other relief. In this OSC, he specifically requested the court “to correct the support modification that it made in November 2006, which provided for total support of \$2,890, however failed to include [Jakubcikova’s] capital gains of \$440,166 (from 2005 Federal tax returns) in the calculation. . . .” He also wanted the court to modify his “income used in the dissomaster calculation to actual or realistic imputed income rather than the highly inflated current income. . . .” In its order of October 29, 2007, the trial court denied both of these requests, and Olczak maintains that these denials were an abuse of discretion.

A. The Capital Gain Issue

The trial court considered the parties’ requests to modify child and spousal support at the hearing on November 28, 2006, and in its order of December 5, 2006, it modified the amounts of child and spousal support to be paid by Olczak to \$1,599 and \$1,385, respectively. In his January 11, 2007 OSC, Olczak argued that the court’s calculations in its December 2006 order erroneously failed to include Jakubcikova’s capital gain of \$440,000 from the sale of the Berkeley home.

When ruling on the capital gain issue raised in Olczak’s January 11, 2007 OSC, the court stated that Olczak was essentially seeking reconsideration of the court’s earlier ruling and the time to contest that ruling had long since lapsed. The court explained: “[Jakubcikova’s] capital gain on her [income and expense] reflects a one-time gain from the sale of the parties’ former home. The court ruled it was not income for support purposes. To the extent [Olczak] was seeking reconsideration of this ruling pursuant to [Code of Civil Procedure section] 1008, his motion was both untimely and not based on ‘new or different facts, circumstances, or law’ as required by the statute. If either party disagreed with that order and did not file an appropriate section 1008 motion, the only

remaining remedy was an appeal to the District Court of Appeal. The issue may not properly be reviewed further in the trial court.”

On appeal, Olczak argues as follows: “The court erred in ruling that respondent’s appellant [*sic*] argued to the court that appellee had obtained a capital gain from the sale of the parties’ former home. The court ruled it was not income for support purposes. No authority was given for his position and no citation.” He adds: “The income derived from the sale of the home should have been considered income by the court and the court erred in ruling otherwise.”

Not only is Olczak’s argument somewhat opaque, but Olczak fails to cite to any document in the record to support his argument. He also has provided no legal argument. Having provided no support for his argument, Olczak has waived any challenge to the lower court’s ruling on the capital gain issue. (See, e.g., *Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647 [contention is waived by failure to cite any legal authority].)

Additionally, our independent examination of the record establishes that Olczak raised this very issue in his declaration dated November 2005 in support of his OSC. In his declaration, Olczak stated the following: “[Jakubcikova] earned \$1,471,334 when our home sold. . . . She insisted on the terms of our stipulated judgment, where I agreed that she would take 70% of the proceeds of the sale, and I would take only 30%. That was because we agreed that if the house sold before her spousal support ended in 2009, she would not claim any further spousal support. . . . She still has over \$400,000 of our house money left I ask that the court calculate a[t] least the \$400,000, if not more, toward [Jakubcikova’s] income in calculating the correct level of support.”

Thus, it is clear that the question of the money Jakubcikova received for selling the Berkeley home was raised in papers in the lower court as early as November 2005. The court considered this information at the hearing in November 2006 and the court in its December 5, 2006 order implicitly ruled that it was not income for support purposes. Olczak did not appeal this ruling. Instead, he filed his January 11, 2007 OSC, more than one year later, and raised the identical issue. The time to challenge the lower court’s

calculation of Jakubcikova's income based on the capital gain issue has long since expired. (See Cal. Rules of Court, rule 8.104(a)(3).)

B. *Olczak's Income*

Olczak in his January 11, 2007 OSC, requested modifications of the spousal and child support to be paid based on his assertion that the lower court's previous calculations of his income were too high. In its order of October 29, 2007, the court ruled that this issue was heard at the hearing of November 28, 2006, and Olczak's contentions were rejected by the court in its order dated December 5, 2007. The court therefore denied this request because the issue had already been decided and the time to contest the earlier finding had run out.

The court spent a considerable amount of time at the hearing on November 28, 2006, assessing Olczak's argument that his income had decreased substantially. At this hearing, the lower court told Olczak that it would not consider any claims to modify spousal support that were the same as his earlier OSC requests that had been dropped when he failed to appear. Olczak responded that he was now requesting a modification due to "health issues, diabetes and two unfortunate accidents. One of which required two weeks of hospitalization." After Olczak admitted having diabetes since 2002, the court remarked that he therefore had the disease when the judgment was entered in 2003. The court told Olczak that his declaration in support of a modification of support did not "tell the court much of anything"

During this same hearing, Olczak claimed that his monthly income was now \$1,919. The court asked him if he was asserting that his gross monthly income of \$14,569 used for the December 2003 settlement was now reduced to \$1,919 because he had been hospitalized for two weeks. Olczak replied that was a partial explanation. He also attributed his lower income to his being disabled due to dizziness and weakness, although he admitted that he was now better. The court countered, "I'm not finding this convincing." Later the court advised Olczak that telling the court he suffered a head injury did not prove a change in circumstance.

Later in the hearing, the court considered Jakubcikova's statements and evidence that the tax returns for Olczak showed that he made over \$400,000 in 1997 and 1998, \$329,000 in 1999, \$263,000 in 2000, \$268,000 in 2001, and \$370,000 in 2002. Jakubcikova reported that Olczak moved to Thailand in 2005 and, at that time, he declared that there were more consulting jobs for him there than in the United States.

Thus, the court considered Olczak's argument that his income had been reduced. In fact, it reduced his support obligations in its order of December 5, 2007. As already noted, Olczak did not appeal that decision.

In this present appeal, Olczak claims that the lower court in its order of December 5, 2007, did not consider the criteria set forth in Family Code, section 4320. However, he cannot now belatedly attempt to mount a challenge to an order of December 5, 2006. Accordingly, we will not consider his argument that the lower court did not apply the proper criteria when ruling on the requests to modify the support payments.

Olczak also appears to be objecting to the current ruling of the October 29, 2007 order, although his argument is not clear. Olczak asserts the following: "Without any authority to support its position, the court presumed that a party has only one opportunity to seek modification of a child support award." He then points to language in the December 2003 judgment that states that future modifications to payments may occur to allow for changes in the circumstances of the parties.

Olczak seems to be operating under the assumption that the abovementioned clause in the December 2003 settlement authorizes him to relitigate issues that have already been decided. It does not. The agreement merely allows the parties to request modifications in the amount of support to be paid when there is a change of circumstances. Once the particular change of circumstance has been raised and decided by the court, Olczak cannot bring up the identical change of circumstance in a subsequent proceeding. Olczak does not point to a "new" change of circumstance not already addressed by the court in an earlier order.

Since Olczak is pursuing the exact same change of circumstance already adjudicated, the doctrine of res judicata bars his claims. "The doctrine of res judicata

precludes parties or their privies from relitigating a cause of action that has been finally determined by a court of competent jurisdiction. Any issue necessarily decided in such litigation is conclusively determined as to the parties or their privies if it is involved in a subsequent lawsuit on a different cause of action. [Citations.] The rule is based upon the sound public policy of limiting litigation by preventing a party who has had one fair trial on an issue from again drawing it into controversy. [Citations.] The doctrine also serves to protect persons from being twice vexed for the same cause. [Citation.]” (*Bernhard v. Bank of America* (1942) 19 Cal.2d 807, 810-811.)

Res judicata applies when: (1) the issues decided in the prior proceeding are identical to those in the second litigation; (2) “there was a final judgment on the merits in the prior action”; and (3) the party against whom the doctrine is asserted “was a party or in privity with a party to the prior adjudication.” (*Citizens for Open Access etc. Tide, Inc. v. Seadrift Assn.* (1998) 60 Cal.App.4th 1053, 1065.) Here, Olczak, who was a party in the prior hearing on November 28, 1997, points to no evidence presented in the current proceeding not mentioned and decided in the prior proceeding.

To the extent that Olczak was disgruntled with the earlier ruling he could have appealed. He did not avail himself of that remedy and cannot now complain about the final decision issued in December 2006. We therefore conclude that the lower court in its October 29, 2007 order properly denied his request to modify the support orders based on a change in his income.

III. Olczak’s Objections to Rulings on His Requests for Reimbursement in the Tentative Order

A. Background

The court held a long cause hearing for the various issues pending and filed its tentative order on February 22, 2007. With regard to both parties’ requests for reimbursement, the court stated the following in its tentative ruling: claims for reimbursement “were ruled only ripe for submission to the court *after* the claimant had presented to the other party a written claim for reimbursement supported by (1) proof of payment and (2) a citation to the authority supporting the claim. The court does *not* in

the first instance review claims for reimbursement; rather the court reviews the refusal of one party or the other to pay a properly documented reimbursement claim presented by the claimant with a citation to the judgment section, other written agreement or the appropriate code provision. If a claim has been presented first to the court without a prior presentation and rejection by the other party, the court indicated it would do one of two things: either reject the claim *with prejudice* because the claim is patently unsupportable, or reject the claim *without prejudice* because it is at least theoretically possible that the claimant could present a proper claim to the other party, which the court could then review if rejected. Under no circumstance, however, will the court grant a reimbursement claim without evidence in the record that a proper claim was first presented to the other party and rejected or ignored.” (Fn. omitted.)

On October 1, 2007, Olczak filed a 190-page declaration objecting to the tentative order of February 2007. Despite his untimely objections, the lower court ruled on Olczak’s objections to the tentative ruling. After considering the objections, the lower court denied Olczak’s various requests for reimbursement.

B. *The Applicable Law and the December 2003 Settlement*

The December 2003 settlement contained a section related to reimbursement and waiver. Section 11.7 in the settlement stated in relevant part: “Except as otherwise provided in this judgment, the court finds that each party waives each of the following: [¶] . . . [¶] 3. Any claim by either party arising from the date of filing the action through September 30, 2003, that there has been an overpayment or underpayment of support pursuant to a temporary support order issued herein, including any order where the court expressly reserved jurisdiction to recalculate support. [¶] 4. Any claim by either party for reimbursement of add-on expenses from the date of filing the action through September 30, 2003.”

When ruling on a request for reimbursement, the court determines whether the other party properly refused the demand for reimbursement. Thus, a demand must be made. Family Code section 4063, subdivision (b) requires a parent to provide the other parent with an itemized statement of costs not more than 30 days after the costs are

accrued. The provision, however, “does not prohibit a party from seeking reimbursement in case of a failure to timely present an itemization of costs. Rather, section 4063, subdivision (c) allows the court to award filing costs and reasonable attorney fees ‘if it finds that either party acted without reasonable cause.’ ” (*In re Marriage of Rothrock, supra*, 159 Cal.App.4th at pp. 236-237.)

C. Reimbursement of \$210,626

Olczak claimed that he was entitled to reimbursement of \$210,626 for support overpayments made to Jakubcikova. The lower court denied this request because it found all of the sums requested, except for a portion of \$1,144,³ were paid prior to the December 2003 settlement and therefore these claims were waived under section 11.7 of the settlement. The court also denied the request on the independent basis that “*all* of these support overpayment claims were previously raised by [Olczak] in an OSC filed on June 27, 2006, and set for trial on September 18, 2006. [Olczak] failed to show up for trial and thus the underlying motions for modification were dropped. That action by the court terminated the court’s authority to make any further retroactive adjustment in the support orders in question (all of which predate the June 27, 2006 OSC).”

Olczak argues that the sums requested that predate the December 2003 settlement are not waived by this agreement.⁴ However, section 11.7 of the settlement clearly bars the claims for reimbursement that arose prior to the settlement. To the extent that some of the expenses are postjudgment, the lower court ruled that it did not have jurisdiction over any of these requests since these issues had been raised in prior OSCs and dismissed when Olczak failed to show up for trial. In his papers in this court, Olczak completely ignores this independent basis for rejecting his claims.

³ The trial court does not specify the exact amount and we cannot determine from the record before us the fraction paid postjudgment.

⁴ He also objects to the court’s statement that Olczak’s more recent filing, which alleged an ambiguity in the judgment, was frivolous and added nothing to the analysis. Other than protest the court’s statement, Olczak presents no evidence or legal argument to counter the court’s assessment.

Since Olczak fails to address the jurisdiction issue, he has not shown that the lower court committed any error. “ ‘A judgment or order of the lower court is *presumed correct.*’ ” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) “The burden of affirmatively demonstrating error is on the appellant. This is a general principle of appellate practice as well as an ingredient of the constitutional doctrine of reversible error.” (*Fundamental Investment etc. Realty Fund v. Gradow* (1994) 28 Cal.App.4th 966, 971; *State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610.) A party appearing in propria persona “is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.” (*Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210.) “ ‘[T]he in propria persona litigant is held to the same restrictive rules of procedure as an attorney.’ ” (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125-1126; accord, *First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 958, fn. 1.)

Here, the lower court determined that Olczak previously requested reimbursement of \$210,626, and the matter was dismissed when he failed to appear for trial. Nothing in the record before us indicates that Olczak requested relief from this judgment by filing a motion pursuant to Code of Civil Procedure section 473 or Family Code sections 2121 and 2122. The time for filing such motions has expired⁵ and, since the lower court no longer had jurisdiction over this issue, it properly denied this request for reimbursement.

⁵ Subdivision (b) of Code of Civil Procedure section 473 provides: “The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken.”

Family Code section provides five exclusive grounds to set aside a judgment in a family law case, including actual fraud, perjury, duress, mental incapacity, or mistake. (*In re Marriage of Brewer v. Federici* (2001) 93 Cal.App.4th 1334, 1344.) Family Code sections 2121 and 2122 also “establish longer time limitations of up to one year—and in cases of duress or mental incapacity, up to two years—for bringing actions or motions to

D. Reimbursement of \$48,259

Olczak sought reimbursement for six categories of costs for a total of \$48,259. The trial court denied each of the requests and, on appeal, Olczak objects to the denial of three of these categories. He objects to the denial of \$8,250, which represented 50 percent of the cost of an apartment in Orinda for the parties' daughter; to the denial of \$8,653, which was 50 percent of the community debts listed in an exhibit submitted by Olczak; and to the denial of \$3,000, which represented 50 percent of the amount Jakubcikova withdrew from a joint account and sent to her parents in Europe. For the reasons set forth below, we affirm the lower court's rulings on these three categories of costs.

1. \$8,250 for the Daughter's Apartment

Olczak claimed that he was entitled to \$8,250 in reimbursement, which represented 50 percent of the cost on an apartment in Orinda for the parties' daughter while she finished high school. The trial court found that a portion of these rental expenses predated the December 2003 judgment, and they were barred by the settlement's provision that contained a release of add-on claims through September 30, 2003. The court denied the remaining amount for the following reasons: "(a) the moving papers fail to state the basis for the claim . . . , (b) there is no *declaration or other evidence* in the record upon which the court may make a factual finding that would support whatever basis [Olczak] is relying upon, and (c) there is no indication in the record that prior to filing the OSC [Olczak] made a written request that [Jakubcikova] pay her share of these items and provided her with proof of his payment of them." (Fn. omitted.)

The court added the following: "[A]t the most recent hearing the parties discussed the circumstance of this claim. It is disputed whether or not [Jakubcikova] ever signed on for this expense. She continued to live in her current residence with the minor. If [Olczak] had thought this was an expense [Jakubcikova] should have contributed to, one

set aside or modify dissolution judgments." (*In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 112.)

would have thought it would have been raised prior to the judgment or that section 3.3 (concerning add-ons) would have been drafted with this expense in mind. To wait until afterwards and assert such a claim is a dubious strategy. In the court's view, this expense would be reimbursable if and only if [Olczak] carried his burden of proving that it falls within section 3.3. He has failed to do that. *Accordingly, the court now **denies with prejudice** [Olczak's] claim for reimbursement of any and all expenses related to the Orinda apartment.*"⁶

In his papers on appeal, Olczak protests that "the court did not read or understand that the apartment in Orinda had to be rented as 'residency requirement' for child attending Orinda High School." He then asserts that he made these claims earlier as part of his November 2005 OSC and May 17, 2007 OSC.⁷ He also declares that these are educational expenses with 90 percent of them being postjudgment debts.

To the extent that we can discern Olczak's argument, it appears to be that the condominium cost was an educational expense because the parties agreed that their daughter should go to public high school in Orinda and they had to have an address in Orinda. He claims that the December 2003 judgment at section 8.1⁸ of the settlement

⁶ Section 3.3 in the December 2003 settlement states the following: "Additions to child support. In addition to the child support set forth above, the following amounts are ordered to be paid (as provided below) to [Jakubcikova] as additional child support payable by [Olczak] to [Jakubcikova]: [¶] Fifty percent (50%) of all routine and emergency healthcare expenses. [¶] Fifty percent (50%) of all elective health care costs, tutoring, extracurricular activity expenses, enrichment activities, and other expenses of the child provided that both parties agree in advance. [¶] The obligation to pay an item shall cease when child support for the child terminates or when the cost is no longer being incurred."

⁷ These documents are not in the appendix submitted by Olczak. Moreover, it is immaterial whether he raised these issues in a prior OSC. He does not point to any document in the record that indicates that he sent a demand for reimbursement to Jakubcikova.

⁸ Section 8.1 of the December 2003 settlement reads: "The court finds that the parties agree that it is in the children's best interest to secure a college education, and that the children should be encouraged to do so. A contribution to the reasonable expenses for this education ('Education Expenses') are ordered to be an obligation of the parties,

requires the parties to split the costs of education and section 8.3⁹ provides for reimbursement for educational expenses. Section 8 refers to education expenses in college, not high school, and therefore the section is inapplicable to alleged high school expenses. Although not cited by Olczak, the judgment does provide that Jakubcikova and Olczak are to share equally the costs related to the educational or other special needs of the minor child.

In any event, even if the parties were to share the costs of the daughter's high school education, Olczak cannot prevail. Olczak cites to no evidence in the record proving that the parties agreed to send their daughter to high school in Orinda or that they both consented to rent an apartment in Orinda. Additionally, Olczak has not referred to any document in the record showing his actual cost or establishing that he made a written request for reimbursement to Jakubcikova. He has therefore failed to meet his burden of

with [Olczak] paying thirty-three percent (33%) of the Education Expenses, [Jakubcikova] paying thirty-three percent (33%) of the Education Expenses, and the child paying thirty-three percent (33%) of the Education Expenses. Any grants, scholarships or loans, obtained by the child, shall be credited to her contribution to educational expenses. 'Education Expenses' shall include: tuition, fees, books, tutors, reasonable computer equipment and software related to course work, room and board in on-campus housing (or equivalent expense), transportation to and from college, clothing, automobile maintenance and insurance, and other reasonable expenses on which the parties may agree. However, the total cost of educational expenses to which the parties must contribute shall not exceed, absent the consent of such party, the cost if the child attended the University of California at Berkeley, regardless of the college or university actually attended by the child."

⁹ Section 8.3 of the December 2003 settlement states in relevant part: "The provisions of this SECTION 8 shall be enforceable by the child or by either party on behalf of the child. Each party shall have a right of reimbursement against the other for any actual payments of Education Expenses made in good faith in fulfillment of the other party's obligation to pay Education Expenses. Once payment of Education Expenses for the child commences, child support for the child shall be suspended. The court finds that each party agrees that Education Expenses shall be paid as provided above, even though the child's education extends beyond any statutory obligation for child support. . . . The court finds that the terms of this SECTION 8 shall not be subject to modification, extension, or revocation by any court."

showing that this was an education expense, and we affirm the lower court's denial of these expenses associated with the condominium.

2. \$8,653 for Community Debts

Olczak claimed that he was entitled to \$8,653 in reimbursement as this represented 50 percent of a community debt that he paid. In denying Olczak's request for \$8,653, the trial court found: "These are all prejudgment debts and thus covered by section 5.4 [of the December 2003 settlement]. The moving papers fail to explain the basis in the judgment for requesting [Jakubcikova] pay 50% of these debts. Moreover, there is no evidence of a pre-filing claim having been presented to [Jakubcikova] with a citation to the authority for the claim and proof of payment by [Olczak]. [Olczak] has added new material in his October 1, 2007 filing on this subject but not addressed the foregoing problems. *Accordingly, the court now **denies with prejudice** [Olczak's] claim for reimbursement of these prejudgment debts.*" (Fns. omitted.)

In his papers in this court, Olczak simply argues that he may recover debts prior to the judgment because the judgment contains "retroactivity language." Section 5.4 of the December 2003 agreement allocated the debts and Olczak provides no explanation as to why this debt of \$8,653 is not covered by the settlement. Furthermore, Olczak fails to point to any evidence that explains the basis for this claim. He also provides no evidence that he presented a pre-filing claim and proof of payment to Jakubcikova. Consequently, he has not met his burden of establishing error and we conclude that the lower court did not abuse its discretion in denying his claim for reimbursement for community debts.

3. \$3,000 for Money Withdrawn from Joint Account

Olczak claimed that he was entitled to \$3,000, which he alleged was 50 percent of the amount Jakubcikova withdrew from their joint account and sent to her parents in Europe. The trial court denied this claim because it found "no prior demand, no citation of authority and no admissible evidence in support of the claim." Further, at the hearing, Olczak admitted that this was a claim that arose prior to the December 2003 judgment. He declared, however, that he did not discover this withdrawal until after he received the case files from his prior attorney. The court noted that Olczak could not make a "non-

disclosure” argument based on a complaint that he did not know information in his own attorney’s file.

Rather than mount a challenge to the merits of the lower court’s ruling, Olczak in his appeal contends that the lower court should have allowed him “further time to seek information on this as this documentation may be available from the escrow holder.” Olczak further asserts: “Appellant has demanded production from appellee on this issue, but to no avail. Appellant requests that this court reverse the lower court on this issue and allow appellant further time to seek proof for support of this claim.”

Olczak neglects to address the reasons for the lower court’s denial of this claim: the claim predates the judgment and Olczak’s own counsel, according to Olczak, was aware of this claim. The December 2003 judgment therefore bars this claim. Further, Olczak has provided no good reason for his failure to acquire the necessary documents to support his claim. Accordingly, we conclude that the lower court properly denied Olczak’s claim for reimbursement for money allegedly removed by Jakubcikova from their joint account prior to December 2003.

IV. Jakubcikova’s OSC of November 22, 2006

Jakubcikova filed an OSC on November 22, 2006. Jakubcikova requested, among other things, attorney fees and a late fee on child and spousal support payments for various months in 2006. The lower court granted a portion of the attorney fees request and granted her request for interest on the late support payments. Olczak objects to these rulings.

A. Jakubcikova’s Request for Attorney Fees

Jakubcikova sought \$21,474 in attorney fees for having to retain counsel to pursue Olczak for unpaid support. The court noted that Jakubcikova was entitled to attorney fees or sanctions pursuant to Family Code section 271. However, it considered the motion for support to be simple and therefore the requested fees too high. The court awarded Jakubcikova only \$3,000 in sanctions against Olczak. The court concluded that this amount was “well within” Olczak’s capacity to pay. We review an attorney fee or

sanction order under Family Code section 271 for an abuse of discretion. (*In re Marriage of Burgard* (1999) 72 Cal.App.4th 74, 82.)

Family Code section 271, subdivision (a) provides: “Notwithstanding any other provision of this code, the court may base an award of attorney’s fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney’s fees and costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties’ incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. In order to obtain an award under this section, the party requesting an award of attorney’s fees and costs is not required to demonstrate any financial need for the award.”

Olczak maintains that the lower court abused its discretion in imposing \$3,000 against him because the evidence shows that this amount places an unreasonable financial burden on him. Although Olczak claims that the evidence does not support the lower court’s decision, he, once again, fails to support his assertion with any citation to the record. Furthermore, the record does not support Olczak’s position. At the November 28, 2006 hearing, the lower court rejected Olczak’s claims that his monthly income had been reduced from the \$14,469 used for the December 2003 settlement to \$1,919. The court’s skepticism was bolstered by Olczak’s lack of documentary evidence and Jakubcikova’s submission of tax returns that revealed Olczak’s gross earnings in the years just preceding the December 2003 settlement varied from a high of over \$400,000 to a low of \$263,000. The court found that Olczak’s income was higher than \$1,919 and ordered him to pay monthly spousal and child support that had a combined total of just under \$3,000. Given this earlier finding regarding Olczak’s income, it was not unreasonable for the court to determine that imposing a \$3,000 sanction on him was not an unreasonable financial burden.

Olczak also protests that the court's order of attorney fees or sanctions was not in accordance with the December 2003 settlement. Specifically, he cites section 12.2 of the settlement, which provided the following: "Each party is ordered to pay his or her own attorney's fees and costs incurred in the negotiation and preparation of this judgment. The court finds that each party has expressly waived any right to ask the court for an award of attorney's fees or costs through the entry of this judgment. The court finds that both parties reserve the right to apply for attorney's fees and costs in any future proceeding to enforce or modify any modifiable provisions of this judgment, or any proceedings to enforce any of the terms of this judgment."

Olczak contends, without any citation to the record, that Jakubcikova's original motion contested his 30 percent community property share, and the December 2003 settlement did not permit attorney fees for this type of challenge. Contrary to Olczak's argument, our review of the record indicates that Jakubcikova sought attorney fees in connection with her attempts to enforce the support provisions in the settlement. In her OSC filed on November 22, 2006, Jakubcikova specifically stated: "[Olczak] should be ordered to pay [Jakubcikova's] legal fees and costs in the sum of \$21,474.00. [Olczak] violated the court order, didn't pay child and spousal support for 14 months and the only way to collect payments was through legal system."¹⁰ Jakubcikova requested attorney fees to enforce the support provision of the settlement and, since the settlement provides for attorney fees on this basis, the lower court's award of fees to Jakubcikova was consistent with the settlement.

Olczak also argues that the record contains no evidence that Jakubcikova needed the money. Jakubcikova's financial situation, however, is irrelevant. Family Code section 271, subdivision (a) expressly provides that "[i]n order to obtain an award under

¹⁰ This OSC filed by Jakubcikova on November 22, 2006, similarly to other critical documents, is not in Olczak's appendix filed in this court. It is unclear whether Olczak's counsel has deliberately not included these documents because they contradict the position he has advanced in this court or whether their omission is a result of negligence.

this section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award."

Olczak's final assertion is that he did not act in any manner to warrant a grant of sanctions against him. We disagree. Olczak's repeated attempts to relitigate issues settled by the December 2003 judgment and postjudgment orders and his refusal to comply with these orders amply support the trial court's conclusion that his conduct has frustrated the policy of the law to promote settlement of litigation (Fam. Code, § 271, subd. (a)). Indeed, his pattern of filing frivolous motions is evident in this appeal where he has raised baseless arguments and supported them with no legal authority and no or minimal citations to evidence in the record.

Accordingly, we conclude that the lower court did not abuse its discretion in imposing sanctions of \$3,000 against Olczak pursuant to Family Code section 271.

B. Jakubcikova's Claim for Interest on Unpaid Support

The trial court interpreted Jakubcikova's request for "late charges" as a claim for interest on unpaid support. It calculated the rate of interest at 10 percent per annum for each unpaid month from the date that payment was due until the date paid. Jakubcikova provided the court with a document that showed the following: the date support was due, the amount due, the date the support was eventually paid, and the interest owed for that month. In the lower court, Olczak did not object to Jakubcikova's calculations of the amount of interest owed, but claimed there were no outstanding sums due. The court granted Jakubcikova's request for interest. It awarded a total of \$3,412.64: comprised of \$1,833.12 in child support and \$1,579.52 in spousal support.

In his appeal, Olczak's sole argument is that he did not have notice of this issue. He, however, never claims that he raised this issue in the lower court. Having failed to raise the issue in the trial court, he has forfeited the right to raise this issue on appeal. (See, e.g., *LeFlore v. Grass Harp Productions, Inc.* (1997) 57 Cal.App.4th 824, 838, fn. 15 [point not raised in trial court is waived].)

Further, Olczak received notice of Jakubcikova's request for interest on the late support payments when the court issued its tentative order on February 22, 2007. In this

order, the court noted that Jakubcikova had requested interest on unpaid support, and specified the information that Jakubcikova was to include in her demand letter to Olczak. The court further advised that Olczak had 15 days from receipt of Jakubcikova's calculation to "agree or disagree with that calculation." Olczak clearly received Jakubcikova's demand letter as he submitted to the court his response to Jakubcikova's request for interest.

Additionally, our review of the record establishes that Jakubcikova provided proper notice of this issue. In a letter dated March 3, 2007, Jakubcikova demanded the interest from Olczak and this letter complied with the court's instructions in its tentative ruling of February 2007. Attached to the demand letter filed with the court was a proof of service that indicated a copy had been sent to Olczak's attorney at that time. Additionally, she attached a copy of the certified mail receipt, which established that Olczak's attorney received the document. Service of Olczak's attorney was sufficient service, as the court's order filed August 12, 2005, pronounced the following: "The parties' attorneys agree to accept service on behalf of their respective clients for all pleadings concerning the current spousal/child support matter before the court."

Accordingly, the lower court properly granted Jakubcikova's request for interest on late support payments.

V. Olczak's October 25, 2006 OSC

Olczak requested attorney fees in the amount of \$61,618. The court denied this request with prejudice, explaining: "[T]he court has not found an adequate explanation of these fees. The total amount claimed is extraordinary and not commensurate with any task the court can see was reasonably required in the postjudgment context. Further, it would appear that [Olczak] is asking [Jakubcikova] to contribute to this expense on the basis of the parties' relative financial capabilities. If [Olczak] wished to pursue this claim, the court indicated in the tentative that it would require legal authority and citations to the record for the basis on which such reallocation of legal expenses could be made. As none was forthcoming in his October 1, 2007 filing, *this request is now denied with prejudice.*"

Olczak argues that the December 2003 judgment requires the party to pay attorney fees when that party fails to comply with the terms of the judgment. Olczak claims that he has incurred these fees as a result of his attempt to enforce the judgment and that he is entitled to fees under Family Code section 3652.

Family Code section 3652 provides: “Except as against a governmental agency, an order modifying, terminating, or setting aside a support order may include an award of attorney’s fees and court costs to the prevailing party.” This statute gives the court the discretion to award fees to a party prevailing in a request to modify a support order.

Here, Olczak does not support his request for attorney fees with any documentation. He provides no information regarding his attorney’s hours or billing rate. Indeed, he does not even state what work his attorney did. Accordingly, the lower court did not abuse its discretion in denying his request for attorney fees in the amount of \$61,618.

VI. Olczak’s May 17, 2007 OSC

Olczak filed an OSC on May 17, 2007, raising various issues. On appeal, Olczak objects to the court’s rulings on attorney fees and reimbursement.

A. Attorney Fees

Olczak requested the same \$61,618 in attorney fees that he requested earlier in his October 25, 2006 OSC. The court denied this request and cautioned Olczak that if he raised this issue again, “he may be sanctioned” pursuant to Code of Civil Procedure section 128.7.

Undaunted, Olczak argues on appeal that the trial court erred in denying his request for attorney fees in his May 17, 2007 OSC. His argument in this court again lacks any citation to the record and raises no new issues not already discussed with regard to his October 25, 2006 OSC. For the reasons already set forth, we conclude that the lower court did not abuse its discretion in denying Olczak’s second request for attorney fees in the amount of \$61,618.

B. Reimbursement

In the trial court, Olczak made seven reimbursement claims. On appeal, he contests the lower court's ruling on two of these claims. For the reasons discussed below, we conclude that the lower court did not abuse its discretion in denying these claims.

1. Health Insurance Costs

Olczak claimed that he overpaid \$5,655 in health insurance costs. The court denied this claim, explaining: "This claim appears to be based on the notion that the [December 2003] judgment's provisions regarding medical expenses apply to only one child; however, the relevant provisions use the term 'children.' In addition, it does not appear there was a demand for reimbursement, attaching proof of payment and citation to authority prior filing, and [Olczak] has failed to detail how he has determined the precise number sought and support it with documentation. ***Denied with prejudice.***"

Additionally, Olczak requested \$58,678 in overpayment of child health insurance costs for the period after March 2006. The court noted that this issue was being denied for the same reasons it was denying the abovementioned claim for \$5,655.

Olczak contends that the lower court erred when it interpreted the provision in the December 2003 settlement as requiring him to pay the health insurance premiums for both of his daughters. He maintains that he only had to pay the premiums for his younger daughter and the settlement, at best, was ambiguous as to whether he had to pay the premiums for both children.

The rules for contract construction are well settled. When, as here, no extrinsic evidence is introduced, we review the lower court's interpretation de novo. (See, e.g., *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 955-956.) " 'The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.' " (Civ. Code, § 1641) " 'Courts must interpret contractual language in a manner which gives force and effect to every provision, and not in a way which renders some clauses nugatory, inoperative or meaningless.' [Citation.] The

contract must also be ‘interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.’ (Civ. Code, § 1636.) ‘Such intent is to be inferred, if possible, solely from the written provisions of the contract.’ [Citation.] ‘ “In construing a contract which purports on its face to be a complete expression of the entire agreement, courts will not add thereto another term, about which the agreement is silent. [Citation.]” ’ [Citation.]” (*Ratcliff Architects v. Vanir Construction Management, Inc.* (2001) 88 Cal.App.4th 595, 601-602.) The words of a contract are to be understood in their ordinary and popular sense. (Civ. Code, § 1644.) “ ‘Thus, if the meaning a layperson would ascribe to contract language is not ambiguous, we apply that meaning. [Citations.]’ [Citations.]” (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 608.)

Here, section 10.2.1 of the December 2003 settlement reads: “[Olczak] is ordered to maintain in full force and effect health insurance for the benefit of the children. [Olczak] is ordered to assign to [Jakubcikova] any right to reimbursement under the health plan for payments made by [Jakubcikova] for covered health care services received in the manner required by the plan or policy and provided to the children. . . .”

Termination of health insurance is specified in section 10.2.2 of the December 2003 settlement, which provides: “Notwithstanding any other provision of this section, [Olczak’s] duty to provide health insurance for the children of the parties shall terminate as to each child when that child reaches the age of twenty-four (24).”

Thus, under the express terms of the December 2003 judgment, Olczak was to pay for the children’s health plan until a child reached the age of 24. These provisions are not ambiguous. The parties’ older daughter was born on September 12, 1984. Since the oldest daughter was 19 years old at the time of the December 2003 judgment, she was under the age of 24 and covered by sections 10.2.1 and 10.2.2 of the settlement.

Rather than address the foregoing provisions or claim that either of his children was over the age of 24 at the time he paid the health insurance costs, Olczak contends that he did not have to pay health insurance costs under the December 2003 judgment because the support provision in the judgment applied only to the minor child. Olczak

cites the custody provision in the settlement, which specifies that child support is to be paid for the “minor child.” The section on child support named the parties’ minor child and stated her date of birth. Olczak claims that this provision’s focus on the minor child creates an ambiguity as to whether the entire agreement applies only to the one child.

There is no ambiguity in the December 2003 settlement regarding the payment of health care premiums. When a provision in the December 2003 settlement applies to only one child, it specifies “child,” “minor child,” and/or the child’s name. When the section applies to both children, the language used is “children.” Under the express terms of the December 2003 judgment, the health insurance provisions were not limited to the minor child. Rather, the health insurance provisions clearly and unambiguously stated that Olczak was to pay health insurance costs for both children until the child reached the age of 24. Thus, the lower court properly rejected Olczak’s requests for reimbursements of \$5,655 and \$58,678 for the costs of health insurance for his older daughter.

2. Add-on Expenses of \$15,341

The trial court stated that Olczak was requesting \$15,341 for 50 percent of child add-on expenses. This sum included two claims for a condominium expense in Orinda, an airfare cost, and a camp cost. The court granted the requests for reimbursement related to the airfare and camp costs for a total of \$1,921.30. As to the claims regarding the condominium expenses, the court noted that Olczak did not provide a “credible, documented explanation of what happened to the condo and why it should be considered an expense under a particular clause of the judgment. . . . Moreover, on this record, one might as easily conclude it was purchased and resold at a profit. On both grounds, the court concludes [Olczak] failed to carry his burden of proof, and now it is ***denied with prejudice.***”

Olczak repeats the argument he made when objecting to the court’s tentative ruling regarding his request for \$8,250 reimbursement for the cost of the apartment in Orinda. For the same reasons already discussed in part III.D.1., *ante*, we conclude that Olczak has failed to meet his burden of showing that this was an education expense or

that he suffered any costs, and we affirm the lower court's denial of the expenses associated with the condominium.

VII. *Jakubcikova's May 30, 2007 OSC*

Jakubcikova filed an OSC on May 30, 2007, seeking modification of child support, modification of spousal support, reimbursement for six items, and \$21,474 in attorney fees. The trial court denied her requests to modify child and spousal support. The court also denied her request for attorney fees except for the \$3,000 in sanctions already awarded. The court ruled on various other issues, and Olczak challenges the lower court's rulings on reimbursement for health insurance, interest on a loan described in the 2003 December judgment, and expenses associated with the sale of the house.

A. *Health Insurance*

Jakubcikova sought reimbursement for health insurance for the parties' two daughters from November 2006 through June 2007. The court ruled as follows: "The [December 2003] judgment obligates [Olczak] to pay for health insurance until each daughter reaches 24 years of age, which for the older daughter is September 2008. [Olczak's] defense is his argument that only one child is covered by the judgment. That is rejected for reasons previously stated. *Accordingly, this claim is **granted for \$2,060.***"

Olczak repeats his argument that the December 2003 settlement is ambiguous as to whether the health insurance provision should apply to both daughters. For the reasons already discussed, we conclude that there is no ambiguity and the settlement makes it clear that the health insurance provision applies to both children until the child reaches the age of 24.

Olczak also maintains that the lower court's ruling is inconsistent because, elsewhere in its order, the court denied Jakubcikova's request for reimbursement for 50 percent of the medical expenses for the older daughter. Jakubcikova sought 50 percent of the older daughter's unreimbursed medical totaling \$2,453.47, and the court ruled: "This was for a period after she turned 18, and the judgment only requires that health *insurance* be paid until the age of 24. As the judgment does not address unreimbursed medical after 18 years of age, this claim is ***denied with prejudice.***"

There is no inconsistency in the lower court's ruling. Medical expenses are not health insurance costs. The court properly denied the request for reimbursement for 50 percent of the medical expenses for the older daughter because she was not a minor and was not covered by the child support provision in the December 2003 settlement. The health insurance provision requiring Olczak to pay for the insurance premiums did not apply to medical expenses.

Accordingly, we affirm the lower court's ruling that Jakubcikova was entitled to reimbursement for health insurance costs for the parties' two daughters from November 2006 through June 2007.

B. Interest on a Loan

Jakubcikova sought \$3,440 for Olczak's portion of interest on a loan that was described in section 7.3 of the December 2003 judgment. The court ruled as follows: "This claim is documented and not satisfactorily rebutted. Indeed, it appears that [Olczak] admits he stopped paying this item because of [Jakubcikova's] 'live-in boyfriend.' Accordingly, the request is **granted in the amount of \$3,440.**"

Section 7.3 of the December 2003 settlement reads in relevant part: "Pending sale of the residence, [Jakubcikova] is ordered to make all payments on indebtedness secured by the residence when due. [Jakubcikova] is ordered to pay all property taxes for the residence on a current basis. . . . [Jakubcikova] is ordered to timely pay for ordinary maintenance and repair and utilities for the residence, except that [Olczak] is ordered to [pay Jakubcikova] a sum equal to 1/12th of the amount received by him from the refinancing times the interest rate on the loan resulting from the refinancing. . . ."

Olczak's complaint regarding this ruling is that Jakubcikova originally requested \$5,448 and then modified her request to \$3,440. He seems to be asserting that the fact that she recalculated the amount to a lower sum establishes error. This argument simply has no merit. She provided the proper documentation for the recalculated amount. Olczak also claims that Jakubcikova did not provide proper documentation. He, however, does not support this contention with any citation to the record. Moreover, he never sets forth any particular deficiency. He has therefore failed to demonstrate that the

evidence in the record does not support the lower court's ruling and we affirm the court's finding that Jakubcikova was entitled to \$3,440.

C. Expenses Associated with the Sale of the House

The court granted Jakubcikova's request for 50 percent of the expenses associated with the sale of the house pursuant to section 7.9 of the December 2003 judgment. The court ruled that this claim was documented and not satisfactorily rebutted; it therefore granted the request in the amount of \$1,730.

Section 7.9 of the December 2003 agreement states in pertinent part: "[Olczak and Jakubcikova] are ordered to share equally the costs of agreed-upon cleaning, repairs, and improvements necessary for readying the residence for sale. . . ."

Here, the lower court found that the \$1,730 expenses that were documented by Jakubcikova were to get the home ready for sale. In opposing this ruling, Olczak does not cite to any evidence in the record, but simply asserts that the lower court erred because he did satisfactorily rebut Jakubcikova's claim. He proceeds to assert that Jakubcikova is claiming reimbursement for items upon which they did not agree and that occurred one year before the house was sold. He also maintains that she is seeking reimbursement for items that arose after the sale of the house, that were for ordinary maintenance and repair, and that had unreadable or invalid receipts. Since he provides no citation to the record and cites no evidence to support each of his contentions, his challenges to the lower court's ruling on the expenses associated with the sale of the house fail.

VIII. Jakubcikova's August 30, 2007 OSC

Jakubcikova filed an OSC on August 30, 2007, seeking unpaid child and spousal support from October 2004 and reimbursement for eight items. Olczak contests the rulings on spousal support and reimbursement.

A. Spousal Support

Jakubcikova contended that she was owed one month of spousal support for October 2004. The court granted her request and awarded her \$2,962. The court explained: "[Jakubcikova] argues that, when back support was paid in December 2005,

the cover letter from her counsel, which transmits the check and recites the months and payments covered, is in error. That letter refers to spousal support for October 2004 and July - December 2005 plus 14 months of child support and \$3,900 in medical insurance reimbursements. However, if one does the math, the total transmitted is one month short on spousal support. This is sufficient proof of non-payment of spousal support for October 2004.”

In his papers in this court, Olczak does not dispute the calculation of the amount awarded. Rather, he claims that he was living abroad and only received a portion of the August 30, 2007 OSC and therefore he did not have an opportunity to respond to Jakubcikova’s request. He declares that he would have responded had he received the entire copy of the OSC because he had “arguments of setoff amounts” He insists that Jakubcikova has no proof that she served him with the OSC.

Olczak does not assert or point to any place in the record where he raised this issue in the trial court. Having failed to raise the issue in the trial court, he has forfeited raising this issue on appeal. (See, e.g., *LeFlore v. Grass Harp Productions, Inc.*, *supra*, 57 Cal.App.4th at p. 838, fn. 15.) Moreover, Olczak acknowledges that he had notice of the OSC; he simply complains that he received “a partial fax copy.” He does not, however, specify what pages he did not receive. The second page of Jakubcikova’s application states that she was seeking child and spousal support “only for October 2004.” Thus, even if he only received the first few pages of Jakubcikova’s OSC, he received notice.

Olczak has waived arguing that he did not receive notice of Jakubcikova’s request for spousal support for October 2004 and we affirm the lower court’s grant of this request.

B. Reimbursement

The court granted Jakubcikova’s claim for reimbursement of \$831 for the health insurance costs for her two daughters for July through September 2007. Olczak again argues that the December 2003 settlement did not require him to pay health insurance for his older daughter. For the reasons already extensively discussed, this argument has no

merit and we therefore uphold the lower court's ruling that Jakubcikova is entitled to reimbursement of \$831 for health insurance costs for July through September 2007.

IX. Olczak's September 25, 2007 OSC

Olczak filed an OSC on September 25, 2007, requesting modification of child and spousal support and asking for attorney fees based on allegations that Jakubcikova committed fraud and perjury in prior proceedings before the court. The court stated that Olczak's claims of fraud and perjury were based on the following: "(a) [Jakubcikova's] 2007 tax return, which purportedly contradicts her 2005 deposition testimony that certain European commercial property was sold to her brother-in-law; (b) [Jakubcikova's] claim in March 2007 that certain money from her brother-in-law was a loan rather than payment for the sale of the commercial property; (c) [Jakubcikova's] 2007 tax return showing European rental income while her 2006 tax return showed no such income; (d) [Jakubcikova's] claim that dividend and interest income 'varies' rather than amounting to that actually reported in her prior tax return."

The trial court found that Olczak did not prove fraud. As to Olczak's first three contentions, they related to an on-going dispute over a certain European property acquired during marriage and allocated to Jakubcikova in the December 2003 judgment. Jakubcikova apparently sold or gave the property to her brother-in-law. The court found that Olczak's evidence was insufficient to prove that the property generated rental or other income that should have been factored into Jakubcikova's total income for purposes of calculating support at the November 28, 2007 hearing. Further, it determined that none of this evidence showed fraud.

As to Olczak's final claim that Jakubcikova's dividend and interest income varied, the trial court found that his claim was "facially insufficient" and was rejected at the hearing on November 28, 2007. Additionally, the court found that Olczak's claims of fraud lacked credibility. It noted that, in contrast, Jakubcikova's explanations appeared reasonable. Finally, it noted that the kind of " 'inconsistencies' " cited by Olczak did not support the element of scienter.

To establish fraud, Olczak had to present evidence of all of the following elements: “ ‘ “(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.” ’ ” (*Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 173.)

Rather than point to any evidence in the record that supports any of the elements of fraud, Olczak simply asserts the following: “[T]he court erred in finding that appellant had not met the threshold required to establish fraud on the part of appellee. The court’s ruling is simply wrong. Appellant established fraud on the part of appellee through her 2005 tax return and income/expense statements. Appellee’s own tax return, foreign tax credits were listed, but not detailed. As the property was the only foreign holding, it must be assumed to be income from the property.”

Olczak simply does not understand his burden on appeal. He must demonstrate with evidence from the record. We repeat the elementary rule of appellate practice, which Olczak has completely ignored: “An appellant contending some particular finding is not supported must set forth in his or her brief a summary of the material evidence upon that issue, and, if that is not done, the error is waived. [Citation.] ‘ “It is incumbent upon appellants to state fully, with transcript references, the evidence which is claimed to be insufficient to support the findings.” [Citations.]’ [Citation.]” (*In re Marriage of Rothrock, supra*, 159 Cal.App.4th at p. 230.)

Olczak has presented no evidence to support any of the elements of fraud. We therefore affirm the lower court’s ruling, which denied Olczak’s requests for modifications of support and for attorney fees based on allegations of fraud.

X. Sanctions

The issues raised in Olczak’s appeal were frivolous and the arguments were not supported by legal authority or citations to the record. A reviewing court “may add to the costs on appeal such damages as may be just” when that court determines that an appeal “was frivolous or taken solely for delay.” (Code Civ. Proc., § 907.) “We impose a penalty for a frivolous appeal for two basic reasons: to discourage further frivolous

appeals, and to compensate for the loss that results from the delay. [Citation.]” (*Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 33.)

After this case had been fully briefed, this court issued an order requesting further briefing on whether to impose sanctions against Olczak and Olczak’s counsel, Philip A. Putman. We directed Olczak and Putman to address the following issues: (1) Olczak’s failure to include critical documents in the record; (2) Olczak’s failure to support his argument with legal authority; (3) Olczak’s failure to make the proper citations to the record; (4) Olczak’s failure to support his substantial evidence argument with any evidence or citations to evidence in the record; (5) Olczak’s untimely challenges to issues that had already been decided; (6) Olczak’s attempt to relitigate issues already decided; and (7) Olczak’s raising issues for the first time on appeal.

In response to the above court order, we received a brief written by Doreen S. Houx, an attorney who is allegedly assisting Putman in liquidating his litigation practice. The brief was not accompanied by any declaration by Houx or by Putman. Instead, attached to the brief was a sealed letter signed by a doctor, which described Putman’s medical condition. The brief written by Houx merely alleged that Putman had various medical ailments and claimed that Putman had a “temporary loss of memory dealing with his cases and other matters” Houx further avowed that Putman could not recall any specific information related to this case and that Olczak could provide little information because he lived outside the country and could only communicate by e-mail. Although Houx admitted she had access to no relevant information, she attempted to exculpate Putman by placing the blame for the inadequacies of the briefs filed in this case on a paralegal allegedly no longer working for Putman. Additionally, Houx explained her inability to locate the documents and files related to this appeal by claiming that Putman’s secretary is in Japan.

Not only does Putman not address any of the issues set forth in the court order, but the brief submitted provides almost no documentation to support any of the claims. Houx declares that she is assisting Putman in liquidating his practice, but Putman is still listed as active with the California State Bar. Moreover, Putman agreed to represent Olczak on

appeal and thereby assisted Olczak in his pattern of abusing the judicial process by relitigating settled issues. Further, on appeal, Putman was responsible for failing to include critical documents in the record, for failing to support Olczak's arguments with any legal authority, for failing to support Olczak's substantial evidence arguments with any evidence or citations to evidence in the record, for making untimely and repeated challenges to issues already decided, and for raising issues on appeal not raised in the trial court.

Putman filed briefs that unreasonably violated the California Rules of Court. The "procedural violations" "support our conclusion that this appeal was frivolous or taken for the purposes of delay or harassment." (*Pierotti v. Torian*, *supra*, 81 Cal.App.4th at p. 33.) Additionally, the appeal reflects Olczak's persistent pattern of litigating issues already settled. We therefore conclude that monetary sanctions, payable to the clerk of this court, are appropriate.

When determining the amount of sanctions to impose, the court may consider the following factors: "[T]he amount of respondent's attorney fees on appeal; the amount of the judgment against appellant; the degree of objective frivolousness and delay; and the need for discouragement of like conduct in the future. [Citation.]" (*Pierotti v. Torian*, *supra*, 81 Cal.App.4th at pp. 33-34.)

In the present case, Jakubcikova was in propria persona and therefore she did not incur any attorney fees. However, the frivolousness of this appeal, as well as the need to discourage this type of conduct in the future, weigh in favor of imposing sanctions.

" " "Other appellate parties, many of whom wait years for a resolution of bona fide disputes, are prejudiced by the useless diversion of this court's attention. [Citation.] In the same vein, the appellate system and the taxpayers of this state are damaged by what amounts to a waste of this court's time and resources. [Citations.] Accordingly, an appropriate measure of sanctions should . . . compensate the government for its expense in processing, reviewing and deciding a frivolous appeal. [Citations.]" [Citation.]' " (*Pollock v. University of Southern California* (2003) 112 Cal.App.4th 1416, 1433.) We therefore impose sanctions on Olczak and Putman to be paid directly to the clerk of this

court.

Other courts have discussed the amount of sanctions that should be imposed to compensate the state for the cost of processing a frivolous appeal. “A number of Court of Appeal decisions have adopted figures of \$5,900 to \$6,000 as a conservative estimate of the costs of processing an average appeal, basing those figures on a calculation made in 1992. [Citations.] A current cost analysis undertaken by the clerk’s office for the Second Appellate District, using the same general methodology, indicates the cost of processing an appeal that results in an opinion by the court to be approximately \$8,500, while the cost for processing a case that is resolved without opinion (for example, by dismissal for lack of an appealable order) to be approximately \$1,750.” (*In re Marriage of Gong & Kwong* (2008) 163 Cal.App.4th 510, 520.)

In the present case, we have issued an opinion that has addressed numerous frivolous and trivial issues. The work for this court has been particularly arduous given that the litigation stretches back to December 2003. Although the legal issues in this case are not complex, the task of combing through this long and incomplete record has been particularly onerous, consuming a considerable amount of this court’s time. In light of the state of the record and the great number of frivolous issues raised, we conclude that sanctions of \$7,500 against both Olczak and Putman, payable to the clerk of this court, are appropriate in this case.

DISPOSITION

The judgment is affirmed. Olczak is to pay the costs of appeal. Putman and Olczak are to pay sanctions of \$7,500 to the clerk of this court. All sanctions are to be paid no later than 30 days after the remittitur has issued. Upon return of the remittitur, the Clerk of the Court of Appeal is to forward a copy of this opinion to the State Bar of California, pursuant to Business and Professions Code section 6086.7, subdivision (a)(3).

Lambden, J.

We concur:

Kline, P.J.

Richman, J.